CITY OF NEW ORLEANS CHIEF ADMINISTRATIVE OFFICE

POLICY MEMORANDUM NO. 47

September 24, 1987

TO: All Departments, Boards, Agencies and Commissions

FROM: Kurt D. Steiner, Chief Administrative Officer

SUBJECT: INDEMNIFICATION FOR CITY OFFICERS AND EMPLOYEES

1. POLICY.

This memorandum announces the City's policy of defending City officers and employees who are involved in civil litigation as a consequence of the proper execution of their duties and of recompensing City officers and employees for criminal defense expenses incurred as a consequence of the bona fide discharge of their duties when criminal proceedings result in a judicial or prosecutorial finding of innocence or lack of probable cause. A previous memorandum under this number was cancelled when it was consolidated into Policy Memorandum No. 5.

2. BACKGROUND.

- A. The City, just from the discharge of its traditional functions, incurs exposure to an enormous amount of civil litigation brought by citizens, former employees, and current employees. Also, many people perceive the City as having "deep pockets" for the satisfaction of their need or desire for compensation for injury or for monetary enrichment through lawsuits, whether filed frivolously or in good faith. Additionally, innocent City officers and employees may sometimes be involved in criminal City officers and employees may sometimes be involved in criminal investigations as a consequence of their service to the City. In such cases it is often advisable for even innocent persons to retain an attorney to protect their interests.
- B. Since the City employees must perform their duties in this litigious environment, the City is now establishing a policy whereby City officers and employees will be indemnified from any legal actions emanating from their lawful performance of duties within the scope of their respective jobs as City public servants. (The scope of the indemnification is described in this memorandum, below.)
- C. Often supervisors feel that their administering of disciplinary actions places them in potential legal jeopardy. Thus, instead of taking appropriate disciplinary action or other corrective measures, the supervisors reluctantly overlook the misconduct. Hopefully, this

indemnification policy will alleviate the supervisors' apprehensions about their performance of <u>all</u> their <u>duties</u>, especially the exercising of their supervisory authority.

3. APPLICABILITY.

- A. Subject to the availability of unencumbered appropriated funds, the City will indemnify and save harmless any City officer or employee against any and all claims, demands, suits, and judgments of sums of money, instituted by or awarded in favor of any third person growing out of, resulting from, or incurred by reason of any good faith act and/or omission of the officer or employee in connection with the lawful discharge or performance of his/her duties as an officer or employee of the City of New Orleans, expressingly excluding any acts or omissions which constitute gross negligence, recklessness, or an intentional tort or wrong, and expressingly excluding any criminal proceedings which result in a conviction from an offense or which result in a grant of immunity from prosecution.
- B. In civil actions, City employees will be entitled to legal representation in the defense of the allegations and claims made in any lawsuit covered by the foregoing paragraph (a). Such defense will be provided at no cost to the City officer or employee. Representation will generally be provided by the City Attorney's Office. However, in the judgment of the City Attorney or of a Court, when certain circumstances warrant that the interests of the City and/or officer or employee would be better served through the acquisition of private counsel, the Law department will relinquish its defense obligations in favor of a private attorney provided, at the City's expense, for reasonable and customary fees approved by the City Attorney.

4. PROCEDURES IN CIVIL MATTER.

- A. A City officer or employee may request the use of private counsel for the defense of a lawsuit when he/she is sued personally and would be held personally liable for payment of any damages awarded in an unfavorable judgment.
- B. Before an officer or employee employs private counsel he/she must obtain prior written approval from the City Attorney's Office. Failure to obtain such prior written approval may result in imposition of the responsibility for payment of legal fees and costs upon the officer or employee. (See paragraph e.) Even when such approval is granted, the employee may have to pay for initial retainer fees and other expenses before being reimbursed by the City for these amounts.

- C. The City Attorney's Office will coordinate the defense of all cases. An officer's or employee's Appointing Authority should forward to the Law Department photocopies of any petitions or other papers in a lawsuit in which the City and/or any of its former or current employees are involved immediately upon receipt of these documents.
- D. It is the officer's or employee's responsibility to notify his/her Appointing Authority of any actual or potential litigation and of any action or development in existing litigation as soon as he/she becomes aware of the same.
- E. If private counsel is obtained by an officer or employee without prior written consent of the Law Department or if an officer or employee violates the rule of paragraphs (f) and (g) below, then the employee will be solely responsible for the payment of all attorney's fees and costs and other expenses. Additionally, the City in such case will not be obliged to indemnify and save the officer or employee harmless from any judgment or other liability incurred by the officer of employee or his/her private attorney. The Law Department may grant exemptions from the application of this rule if subsequent approval for the hiring of private counsel is issued and if the Law Department finds that the failure to obtain prior approval has not prejudiced the City's interest.
- F. The officer or employee who is represented b private counsel should keep a log of all services rendered by the private counsel and of any meetings or correspondence. These records will assist the City in the payment of reasonable and customary costs of the officer's or employee's representation by private counsel.
- G. To the extent that the law permits and with due regard for the fundamental rights of the officers and employees of the City, each officer or employee involved in civil litigation shall be obliged to cooperate as much as is reasonably possible with the City and its attorneys in the defense of civil litigation.

5. CRIMINAL MATTERS.

A. City officers and employees will be indemnified for reasonable attorney's fees and costs reasonably incurred in the course of appearance or involvement in criminal proceedings, whether as a witness, suspect, or defendant provided the appearance or involvement arises out of, results from, or is incurred by reason of any good faith act and/or omission of the officer or employee in connection with the lawful discharge or performance of his/her duties as an officer or employee of the City of New Orleans, expressingly excluding any acts or omissions which constitute gross negligence, recklessness, or an intentional tort or wrong, and expressingly excluding any criminal proceedings which result in a

conviction of an offense or which result in a grant of immunity from prosecution. Such indemnification will be made only if and when 1) the officer or employee has been found innocent of all charges by a Court; 2) a grand jury has returned "no true bill" when it considers indictment of the officer or employee; 3) the criminal proceeding has been terminated for a year or more and no criminal charges have been brought against the officer or employee or a Court has dismissed all charges in advance of trial for want of probable cause or for some other reason which supports the presumed innocence; or 4) the appropriate prosecutorial authority has certified in writing that the officer or employee is or has been involved in a criminal proceeding as a witness merely, is not a suspect, potential defendant, or uncharged coconspirator, and that there is no probable cause for prosecution.

B. The reasonableness of attorney's fees and costs and whether and to what extent they were reasonably incurred shall be determined by the City Attorney, after consultation with the Chief Administrative Officer.

6. INQUIRIES.

Any inquiries about this policy memorandum should be addressed to the Law Department of the City of New Orleans at 586-4653.

KDS/snj